

RESOLUTION 2008-1834

A RESOLUTION OF THE TOWN OF SURFSIDE FLORIDA, FLORIDA GRANTING TO PEOPLES GAS SYSTEM, A DIVISION OF TAMPA ELECTRIC COMPANY, ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE NATURAL GAS FRANCHISE AGREEMENT TO USE THE PUBLIC RIGHTS-OF-WAY OF THE TOWN OF SURFSIDE, FLORIDA, AND PRESCRIBING THE TERMS AND CONDITIONS UNDER WHICH SUCH FRANCHISE MAY BE EXERCISED; PROVIDING FOR IMPLEMENTATION OF AGREEMENT; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Peoples Gas System, a Division of Tampa Electric Company (the “Company”) and the Town of Surfside (“Town”) desire to enter into a franchise agreement for a period of fifteen (15) years commencing from the date provided in this Resolution; and

WHEREAS, the Town Commission finds that it is in the public interest of its citizens to enter into a new franchise agreement with the Company;

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, THAT:

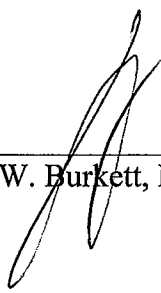
Section 1. Recitals Adopted. That each of the above stated recitals are hereby adopted, confirmed, and incorporated herein.

Section 2. Agreement Approved. The Agreement, attached hereto as Exhibit “A” between the Town and the Company is hereby approved, and the Town Mayor is hereby authorized to execute the Agreement, on behalf of the Town, once approved as to form and legal sufficiency by the Town Attorney.

Section 3. Implementation. The Town Manager is hereby authorized to take all action necessary to implement this Resolution and the Agreement in accordance with the terms, conditions and purposes of this Resolution and the Agreement.


Section 4. Effective Date. That this Resolution shall be effective immediately upon adoption.

PASSED and ADOPTED on this 12th day of May, 2008.




Charles W. Burkett, Mayor

Attest:



Beatris M. Arguñales, CMC
Town Clerk

**APPROVED AND TO FORM AND
LEGAL SUFFICIENCY:**



Lynn M. Dannheisser, Town Attorney

Res. 2008-1834

GAS FRANCHISE AGREEMENT

Between

PEOPLES GAS SYSTEM

And

THE TOWN OF SURFSIDE

THIS AGREEMENT, made and entered into this ____ day of May, 2008, by and between the PEOPLES GAS SYSTEM, a Division of Tampa Electric Company, Inc. a Florida Corporation, (the "COMPANY"), and the TOWN OF SURFSIDE, a municipal corporation of the State of Florida, existing under the laws of Florida, (the "TOWN") (each a "Party", collectively, the "Parties").

WHEREAS, the Company and the Town desire to enter into a franchise agreement for a period of fifteen (15) years commencing from the effective date of this Agreement; and

WHEREAS, the Town Commission finds that it is in the public interest of its citizens to enter into a new franchise agreement with the Company;

Section 1. Definitions. For the purposes of this Agreement, the following terms shall have the meaning given.

- A. "Customer" shall mean any person, firm, public or private corporation, or governmental agency served by the Company within the corporate limits of the Town.
- B. "Town" shall mean the Town of Surfside, Miami-Dade County, Florida, its successor and assigns.
- C. "Company" shall mean Peoples Gas System, a division of Tampa Electric Company, a Florida corporation, its successors and assigns.
- D. "Gas" or "Natural Gas" shall mean natural gas, manufactured gas, a mixture of gases or all of the foregoing which is distributed in pipes and measured by meter on the Customer's premises. It shall not mean propane gas or liquefied petroleum gas (commonly referred to as "bottled gas") or any other fuel that is typically

delivered by truck and stored in tanks.

- E. "Gross Revenues" shall mean all revenues (as defined by the Florida Public Service Commission) received by the Company from any Customer from the sale, transportation, distribution or delivery of Gas.
- F. "Facilities" or "equipment" shall mean any pipe, pipe line, tube, main, service, trap, vent, vault, manhole, meter, gauge, regulator, valve, conduit, appliance, attachment, structure or structures, and appurtenances used or useful in the distribution of gas, located or to be located in, upon, along, across, or under the streets or within the public rights of way.
- G. "Franchise" or "Franchise Agreement" shall mean this agreement, as passed and adopted by the Town and accepted by the Company, as provided in Section 23 below.
- H. "FPSC" shall mean the Florida Public Service Commission or any successor agency.
- I. "Distribution System" shall mean any and all transmission pipe lines, main pipe lines and Customer pipe lines, together with all necessary and desirable appurtenances, that are situated within the corporate limits of the Town and are reasonably necessary for the sale, transportation, distribution or delivery of Natural Gas for the public and private use of Customers.

Section 2. **Grant.** The Town grants to the Company the non-exclusive right, privilege, and franchise to lay, erect, construct, operate and maintain in, on or under any and all of the public streets, alleys, highways, waterways, bridges, easements and other public places of the Town, as they now exist or may be later constructed, opened, laid out or extended within the present incorporated limits of the Town, or in such territory as may be later added or annexed to, or consolidated with, the Town, a Distribution System subject to the terms and conditions contained in this Agreement . Storage facilities are specifically excluded from this franchise. This franchise is for distribution only.

Section 3. **Term.** Except as provided in Section 15, the Franchise granted shall be for a period of fifteen (15) years from the effective date of this Agreement .

Section 4. **Assignment.**

A. The Franchise granted by this Agreement shall not be leased, assigned or otherwise alienated or disposed of except with the prior express written consent of the Town Commission of the Town, which shall not be unreasonably withheld or unduly delayed. No assignment shall be allowed without the assignee assuming the terms of the Franchise Agreement with the Town. Any assignee shall acknowledge in writing that it is bound by the terms of this Franchise Agreement.

B. Notwithstanding the foregoing, the Company may lease, assign or otherwise alienate and transfer this Franchise in connection with the lease or sale of the Distribution System or upon its merger and consolidation with, or transfer to, any other corporation engaged in similar business (including any affiliate or subsidiary of the Company), or pledge or mortgage such Franchise in connection with the physical property owned and used by it in the operation of the Distribution System for the purpose of securing payment of monies borrowed by the Company without the express consent of

the Town Commission of the Town, provided that any successor-in-interest to the Distribution System agrees to be bound by the terms of the Franchise Agreement. Any assignee shall acknowledge in writing that it is bound by the terms of this Franchise Agreement.

Section 5. Town Covenant. As a further consideration for this Franchise Agreement, the Town covenants and agrees that it will not, during the term of this Franchise Agreement or any extension thereof, engage in the business of distributing or selling natural gas within the corporate limits of the Town, as modified, during the term of this Franchise Agreement.

Section 6. Use of Streets. The Distribution System shall be erected, placed, or laid in such manner as will, consistent with necessity, least interfere with other public uses of the streets, alleys, avenues, easements, and public rights of way, and the streets shall not be obstructed, and before, except in an emergency situation, the Company makes any excavation or disturbs the surface of any of the streets, alleys, or other public rights of way, it shall have made application for and received a permit from the appropriate Town authority. The Town shall issue, or if applicable deny, permits within ten (10) business days of application by the Company. The Company shall, with due diligence and dispatch, place such streets, easements or public rights of way in as good condition and repair as before such excavation or disturbance was made, and in default of that obligation the Town may after 10 days written notice to Company and reasonable opportunity to cure make such repairs and charge the reasonable cost of them to the Company and collect the same from it.

To the extent consistent with Florida law, the Company hereby agrees to abide by all the rules and regulations and ordinances which the Town has passed or might pass in the future, and further agrees to abide by any established policy which the Town or its duly authorized representative has passed, established, or will establish; provided, however, the Town shall not pass any ordinance or regulation that results in a material change in the rights or obligations of the Company under the Franchise Agreement.

Section 7. Maintenance. All such components of the Distribution System of the Company located within the Town shall be installed and maintained in accordance with accepted good practice and in accordance with the orders, rules, and regulations of the Florida Public Service Commission or other regulatory body having jurisdiction over the Company.

Section 8. Laying of Pipe. All components of the Distribution System shall be laid consistent with all applicable codes, rules, regulations and laws, including, to the extent consistent with all applicable codes, rules, regulations and laws, specifications contained in Town permits.

Section 9. Construction Work. The Town reserves the right to permit to be laid electric conduits, water and gas pipes and lines, cables, sewers, and to do and permit to be done any underground work that may be deemed necessary or proper by the Town in, across, along, or under any street, alley, public way, easement, place, or other public rights of way. Whenever, by reason of establishing a grade or by reason of changes in the grade of any street, or by reason of the widening, grading, paving, or otherwise improving present or future streets, alleys, or other public rights of way, or in the location or manner of construction of any water pipes, electric conduits, sewers, or other

underground structure, it shall be deemed necessary by the Town to alter, change, adapt, or conform any portion of the Distribution System of the Company for an identified public purpose listed above, such alterations, or changes, shall be made by the Company as ordered in writing by the Town, without claim for reimbursement. If the Town shall require the Company to adapt or conform any portion of its Distribution System or in any way to alter, relocate or change its property to enable any other person or entity to use any street, alley, easement, highway or public rights-of-way of the Town, as part of its permitting or approval process, the Town shall require the person or entity desiring or occasioning such alteration, relocation or change to reimburse the Company for any loss, cost or expense caused by or arising out of such change, alteration or relocation of any portion of the Company's facilities. The Company further agrees that it will use reasonable care during the alteration or relocation of a portion of its Distribution System so as to not interfere with, change, or injure any water pipes, drains, or sewers of Town unless it has received specific permission from the Town or its duly authorized representative.

Section 10. Franchise Fee. Within thirty (30) days after the close of the first full billing month following the effective date of this Franchise Agreement, and each month thereafter during the term of this Franchise Agreement, the Company, its successors or assigns, shall pay to the Town, or its successors, a sum of money which, when added to the amount of all taxes, licenses, permits, or other impositions levied or assessed by or on behalf of the Town upon the Company, is equal to 6% of the Company's Gross Revenue, less any adjustments for uncollectable accounts, from the sale, transportation, distribution or delivery of Natural Gas to Customers within the

corporate limits of the Town. The franchise fee payment shall be deemed paid on time if post-marked within thirty (30) days of the close of the preceding billing month, subject to interest on any amount not in dispute at one percent (1%) percent monthly when payment is more than 30 days late. In the event that the Company is granted a franchise from another municipality or governmental entity in Miami-Dade County that requires it to pay a franchise fee in excess of six percent (6%), then within sixty (60) days of being granted said franchise, the Company shall automatically increase the franchise fee to the Town provided for in this paragraph.

Section 11. Franchise Parity. If, during the term of this Franchise Agreement, the Town, by franchise agreement or ordinance, allows other gas providers, gas consumers or gas transporters ("Alternate Gas Providers") the right, privilege or franchise to construct, maintain, operate or use gas facilities in, under, upon, over or across the present or future streets, alleys, bridges, easements or other public rights-of-way of the Town, for the purpose of supplying or delivering Natural Gas to customers located within the corporate limits of the Town or receiving such gas from a person other than the Company within such corporate limits, and imposes a franchise compensation obligation or an equivalent on such Alternate Gas Provider for any customer or class of customers that is less than that imposed with respect to the same Customer or class of Customers under this Franchise Agreement, the franchise compensation rate and/or base to which such rate is applied with respect to the same class of customers shall be reduced under this Franchise Agreement so that the franchise compensation paid under this Agreement for such Customer class is no greater than the franchise compensation payable by such Alternate Gas Provider under the franchise agreement or ordinance applicable to it, when

compared on a dollars-per-therm basis. In the event that the Town determines not to impose any franchise compensation by agreement, ordinance or otherwise on any such Alternate Gas Provider, the Company's obligation to pay a franchise fee under this Franchise Agreement with respect to revenues derived from the provision of service by the Company to the comparable class of customers served by such Alternate Gas Provider thereafter shall be extinguished. No reimbursement for past charges shall be made.

Section 12. Accounts and Records. The Company shall maintain accounting, maintenance, and construction records as prescribed by the FPSC. The Company shall establish and maintain appropriate accounts and records in such detail that revenues within the corporate limits of the Town are consistently declared separately from all other revenues, and such records shall be maintained within the State of Florida, and be open at all reasonable times for inspection by the duly authorized representatives of the Town pursuant to an appropriate confidentiality agreement. Upon request by the Town, or its designated representative, the Company shall make available such records within thirty (30) days to the Town for the determination of the accuracy of the Gross Revenues upon which the Company's franchise fee is based. The Company shall maintain its billing records only for the period of time required by the FPSC and any examination conducted after such period shall be confined to the billing records then available.

No less than thirty (30) days prior to the effective date of a change in the Town limits, whether by addition, annexation, or consolidation, the Town shall deliver to the Company written notice of such occurrence, and include in such notice a description of the affected territory.

Section 13. Insurance. During the term of this Franchise, the Company shall file with the Town Clerk and shall keep in full force and effect at all times during the effective period, insurance certificates evidencing the following insurance and/or self-insurance policies:

General Liability:

Insurance or evidence of self-insurance within the corporate limits of the Town, as they currently exist or may exist in the future, the terms and conditions of which shall provide the Town the minimum sum of \$5,000,000.00 for injury or death to all persons and shall include the Town as an additional insured as to the Company's construction or operation of a Natural Gas Distribution System within the corporate limits of the Town, as they currently exist or may exist in the future. Coverage limits of 10,000,000.00 per occurrence shall remain in full force and shall be undiminished during the effective period of this Agreement .

Automobile Liability:

Insurance and/or self-insurance with a combined single limit of \$5,000,000.00 per occurrence for any one accident or loss. The required limits may be satisfied by a combination of self-insurance, primary insurance, and/or excess or umbrella insurance. The Town shall be included as an additional insured on such automobile policies.

Workers' Compensation:

Insurance and/or self-insurance Statutory Limits Part A \$1,000,000.00 Employers' Liability Limit Part B

Every such insurance policy shall contain a provision by which every company executing the same shall obligate itself to notify the Town Clerk, in writing, at least thirty (30) days before any material alteration, modification, or cancellation of such policy is to become effective and the Town shall be provided copies of policies or certificates

annually. Notwithstanding the foregoing, to the extent provided by law, the Company may meet any of the coverage requirements outlined above in whole or in part with self-insurance.

Section 14. Indemnification. In consideration of the permissions granted to the Company by this Franchise Agreement, the Company agrees to defend, indemnify and hold harmless the Town, its officers, agents and employees from and against claims, suits, actions, and causes of action, caused by or arising out of and to the extent of the Company's, willful misconduct, negligent act or omission, and negligent operation of the Distribution System within the Town during the term of this franchise and resulting in personal injury, loss of life or damage to property sustained by any person or entity, through or as a result of the doing of any work authorized in this Agreement or the failure to do work required in this Agreement, and including all reasonable costs, attorney fees, expenses and liabilities incurred by the Town in connection with any such claim, suit, action or cause of action including the investigation of them, and the defense of any action or proceeding brought on them and any order, judgment or decree which may be entered in any such action or proceeding or as a result of them, except that neither the Company nor any of its employees, agents, contractor, licensees, or sublessees shall be liable under this section for any claims, suits, actions, damages, expenditures, including attorney's fees, or causes of action arising out of injury, loss of life or damage to persons or property caused by or arising out of the negligence, strict liability, intentional torts, criminal acts, or error of the Town, its officers, agents, or employees. The provisions of this section shall survive the expiration or earlier termination of this Franchise Agreement. Nothing in this Franchise Agreement shall be construed to affect in any way the Town's rights, privileges,

and immunities under the doctrine of “sovereign immunity” and as set forth in Section 768.28, Florida Statutes.

Section 15. Termination or Revocation of Grant. Violation by the Company of any of the covenants, terms, and conditions of this Agreement , or default by the Company in observing or carrying into effect any of the covenants, terms and conditions, shall authorize and empower the Town to declare a termination of and to revoke and cancel all rights granted under this Agreement , provided, however, that before such action by the Town shall become operative and effective, the Town shall have been served the Company with a written notice setting forth all matters pertinent to such violation or default, and describing the action of the Commission with respect to them, and the Company shall have had a period of sixty (60) days after service of such notice within which to cure such violation or within which to present a plan, satisfactory to the Town, acting reasonably, to affect such cure; and provided further that any violation or default resulting from a strike, a lockout, an act of God, or any other cause beyond the control of the Company shall not constitute grounds for revoking and terminating any rights under this Agreement .

Section 16. Rates, Rules And Regulations. The Company shall provide gas service within the limits of this Franchise in accordance with the Florida Public Service Commission rules and regulations..

Section 17. Complaints. All complaints shall be resolved by the Company in accordance with the Florida Public Service Commission rules and regulations.

Section 18. Town’s Right to Regulate Use of Streets Not Abrogated. Nothing in this Franchise Agreement shall be construed as surrender by the Town of its

right or power to pass ordinances regulating the use of its streets in accordance with Town's police powers or property rights; provided, however, the Town shall not pass any ordinance or regulation that results in a material change in the rights or obligations of the Company under the Franchise Agreement.

Section 19. Changes in Provisions. Changes in the terms and conditions of this Agreement may be made by written agreement between the Town and the Company.

Section 20. Severability; Change in Law.

A. If any section, part of a section, paragraph, sentence, or clause of this Agreement shall be adjudged by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of any other portion, but shall be restricted and limited in its operation and effect to that specific portion involved in the controversy in which such decision shall have been rendered; provided, however, that should elimination of the specific portion of the Franchise Agreement adjudged to be invalid result in significant adverse consequences to a party, then that party may terminate this Franchise Agreement by providing thirty (30) days written notice to the other party.

B. Upon the issuance by a court of competent jurisdiction of an order, ruling, or decision, or the enactment or adoption by the Florida Legislature, the Town or any other governmental or regulatory body, of a law, rule, regulation or ordinance, that materially diminishes a municipality's ability to exact franchise fees from a utility, or that effectively does away with the ability of a municipality to grant a franchise altogether, then the Company or Town may terminate this Franchise Agreement by providing ninety (90) days written notice to the other party.

Section 21. **Governing Law.** This franchise shall be governed by the laws of the State of Florida and applicable federal law.

Section 22. **Effective Date.** This Franchise Agreement shall become effective upon its acceptance by the Company, which acceptance must be evidenced in writing by Company within thirty (30) days of the Town's passage and adoption of this Agreement .

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective the day and year first above written.

**TOWN OF
SURFSIDE, FLORIDA**

**PEOPLES GAS SYSTEM, A DIVISION
OF TAMPA ELECTRIC COMPANY**

By: _____
Town Manager

By: _____

Attest: _____ (SEAL)
Town Clerk

Attest: _____ (SEAL)
Secretary

LEGAL REVIEW:

By: _____
Town Attorney

By: _____
Counsel